

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CITY OF SOUTH BEND,)	
Plaintiff,)	
vs)	
)	
SOUTH BEND COMMON COUNCIL, TIM)	
CORBETT, DAVE WELLS, STEVE)	
RICHMOND, BRIAN YOUNG, and SANDY)	Case No.
YOUNG,)	3:12-CV-475
Defendants.)	
-----)	
BRIAN YOUNG, SANDY YOUNG,)	
TIMOTHY CORBETT, DAVID WELLS,)	
and STEVE RICHMOND,)	
Plaintiffs,)	
vs)	
)	
THE CITY OF SOUTH BEND Acting)	
through its Police Department,)	
DARRYL BOYKINS, Individually and)	
in his Official Capacity as)	
Chief of Police, KAREN DePAEPE,)	
and SCOTT DUERRING,)	
Defendants.)	
-----)	

The Videotaped Deposition of DIANA SCOTT

Date: Thursday, June 20, 2013

Time: 10:11 a.m.

Place: Pfeifer, Morgan & Stesiak
53600 North Ironwood Drive
South Bend, Indiana 46635

Called as a witness by the Defendants/Plaintiffs
in accordance with the Federal Rules of Civil
Procedure for the United States District
Court, Northern District of Indiana, South Bend
Division, pursuant to Notice.

Reported by

Angela J. Galipeau, RPR, CSR

Notary Public, State of Indiana

MIDWEST REPORTING, INC.

1448 Lincolnway East

South Bend, Indiana 46613

(574) 288-4242

1 APPEARANCES:

2 MR. EDWARD A. SULLIVAN, III
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5 202 South Michigan Street
6 South Bend, Indiana 46601
7 (574) 239-1930
8 edward.sullivan@faegreBD.com

9 MS. ALADEAN M. DEROSE
10 City Attorney
11 227 West Jefferson Boulevard, Suite 1400
12 South Bend, Indiana 46601
13 (574) 234-5091

14 For the Plaintiff/Defendants, The City of South
15 Bend;

16 MR. DANIEL H. PFEIFER
17 Pfeifer, Morgan & Stesiak
18 53600 North Ironwood Drive
19 South Bend, Indiana 46635
20 (574) 272-2870

21 For the Defendants/Plaintiffs, Tim Corbett, Dave
22 Wells, Steve Richmond, Brian Young, and Sandy
23 Young;

24 MR. E. SPENCER WALTON, JR.
25 May Oberfell Lorber
4100 Edison Lakes Parkway
Mishawaka, Indiana 46545
(574) 243-4100
ewalton@maylorber.com

For the Defendant, South Bend Common Council;

1 MR. THOMAS M. DIXON
2 Dixon, Wright & Associates, P.C.
3 55255 Birchwood Court
4 Osceola, Indiana 46561
5 (574) 315-6455

6 For the Defendant, Darryl Boykins;

7 MS. MARIELENA DUERRING
8 Duerring Law Offices
9 61191 U.S. 31 South
10 South Bend, Indiana 46614
11 (574) 968-0250

12 For the Defendants, Karen DePaepe and Scott
13 Duerring;

14 ALSO PRESENT

15 Ms. Laura Switalski, CLVS, Midwest Reporting
16 Mr. David Wells
17 Mr. Timothy Corbett.

18 * * *

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South Bend, Indiana 46613

(574) 288-1212

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I N D E X
THE VIDEOTAPED DEPOSITION OF DIANA SCOTT

DIRECT EXAMINATION

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CROSS-EXAMINATION

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CROSS-EXAMINATION

By Mr. Sullivan..... Page 131

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By Ms. Duerring..... Page 142

* * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
6	Position Description, Director of Communications	8
6A	Position Description, Communications/IDACS Director	9
14	Letter to Ms. Bruce, 7-21-11	132
15	Screen shot, "Search from"	134
16	Screen shot, date, time, etc.	135

* * *

1 Q. With the VoIP system, was it possible to record all of the
2 phone lines at the same time?

3 A. With the VoIP system, yes, it would have been.

4 Q. Before the VoIP system, was it possible to record all of
5 the phone lines at the South Bend Police Department at the
6 same time?

7 A. Are you asking me with our current system?

8 Q. No.

9 A. The voice logger?

10 Q. I said before the VoIP system.

11 MR. SULLIVAN: Hold on. Hold on. There's a
12 confusion. The VoIP system is the phones.

13 THE WITNESS: It's separate than the --

14 MR. SULLIVAN: Hold on.

15 THE WITNESS: Sorry.

16 MR. SULLIVAN: She referred to the logger as the
17 recording. So I think there may be some confusion
18 that you could clear up.

19 BY MR. PFEIFER:

20 Q. With the logger that existed before 2012, was it possible
21 to record all of the phone lines going into the South Bend
22 Police Department at the same time?

23 A. No.

24 Q. Why not?

25 A. There's a limit as to the channels.

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1 Q. What is the number on that limit?

2 A. I'd have to look, but I want to say it's around 40.

3 Q. Okay. I don't need an exact number, an approximate
4 number, how many phone lines are there at the South Bend
5 Police Department?

6 A. I'd say a hundred. I have absolutely no idea.

7 Q. Okay. After the October 12th meeting where Phil Trent
8 left the meeting, went -- your impression, had a
9 conversation with Brian Young, and then came back to you
10 -- and we've already been through that -- he wanted the
11 recording of that line disconnected yesterday, I think
12 were your words, after that, did you ever have a
13 conversation with Brian Young about his lines being
14 recorded?

15 A. Yes, I did.

16 Q. Tell me about those conversations.

17 A. It was after the phones were switched over to VoIP.
18 Captain Young came to my office, asked if he could speak
19 with me in private and closed the door. He asked me if
20 his line was currently recorded. I told him it was not.
21 He said had his line ever been recorded, I told him it
22 had.

23 Q. When did this conversation take place?

24 A. It would have had to have been sometime either in January
25 or February of 2012.

1 on a regular daily basis as part of your duties, either as
2 assistant or now as director, with the telephone system as
3 opposed to the logger?

4 A. No.

5 Q. Okay. The October meeting that we talked about was for
6 purposes of a new system of some kind; is that right?

7 A. Correct.

8 Q. A new logging system or a new phone system?

9 A. There was going to be a new recording system for those
10 VoIP phones because the voice logger we possessed did not
11 have the capability to record VoIP.

12 Q. And what is VoIP?

13 A. Voice over Internet protocol. It's a type of phone line
14 that the sound is transmitted over a computer Internet
15 line.

16 Q. Okay. All right.

17 MR. SULLIVAN: Would you mark this?

18 (Exhibit 14 marked for identification.)

19 BY MR. SULLIVAN:

20 Q. Ms. Scott, the court reporter handed to you Exhibit 14,
21 and it is a letter dated July 21st, 2011, from Aladean
22 DeRose to Ms. Nancy Bruce regarding a FOIA request. And
23 connected to that appears to be a FOIA request, and then
24 also an e-mail to Mr. Bodnar from Nancy Bruce. Take a few
25 moments and look through that and let me know when you've

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1 done that.

2 A. Okay.

3 Q. Okay. Does the request that is discussed in Exhibit 14, a
4 Freedom of Information Act, or sometimes called FOIA
5 request, is that the type of request that you talked about
6 earlier that would be part of the responsibilities of the
7 communications personnel, you and Karen DePaepe, to locate
8 responsive recorded calls?

9 A. Yes.

10 Q. All right. Now, I think if you look at Exhibit 14 on the
11 last page, there's an e-mail which contains specific
12 requests that are enumerated. Do you see the enumerated
13 requests?

14 A. I do.

15 Q. And 3 and 4 ask for a copy or transcript of 911 calls. Do
16 you see that?

17 A. Yes.

18 Q. And then if you look again on the first page of Exhibit
19 14, the letter appears to be responsive because 3 and 4
20 say if there was such a 911 call, if such a call was made
21 for 3 and 4. Do you see that?

22 A. Yes.

23 Q. Okay. So, again, it would have been your responsibility
24 if asked by Karen DePaepe while you were the assistant to
25 locate a responsive 911 call if you were asked to by the

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UNITED STATES DISTRICT COURT
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CORBETT, DAVE WELLS, STEVE) 3:12-CV-475
RICHMOND, BRIAN YOUNG, and SANDY)
YOUNG,)
Defendants.)
-----)
And related case.)
-----)

DIANA SCOTT

I hereby acknowledge that I have read the foregoing transcription regarding the case of City of South Bend vs South Bend Common Council, et al., taken Thursday, June 20, 2013, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the additions or changes, if any, as noted on the attached errata sheet.

Diana Scott

DIANA SCOTT

SUBSCRIBED AND SWORN to
before me this 12th day
of July A.D. 2013.

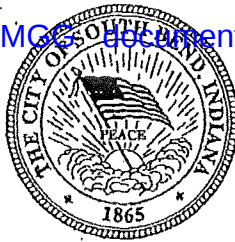
Diana Kay Gosh

Notary Public, State of Indiana
County of Residence: Saint Joseph
My Commission Expires: Nov 8, 2017

ORIGINAL

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SOUTH BEND, INDIANA 46601-1830



PHONE 574/ 235-9241
FAX 574/ 235-7670

CITY OF SOUTH BEND STEPHEN J. LUECKE, MAYOR

DEPARTMENT OF LAW

CHARLES S. LEONE
CITY ATTORNEY

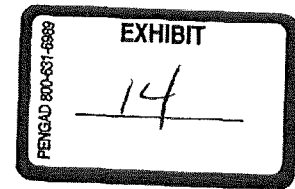
ALADEAN M. DeROSE
CHIEF ASSISTANT CITY ATTORNEY

July 21, 2011

Ms. Nancy L. Bruce
ABC 57 News
53550 Generations Drive
South Bend, IN 56635

Re: Public Records Request

Dear Ms. Bruce:



In response to your public records request which was faxed into our office on Wednesday afternoon, I will respond to your five requests in the order you gave them.

1. The phrase "any and all public records" does not meet the requirement of specificity set forth in I.C. 5-14-3-3(a)(1). However it is clear that you seek public records involving Officer Newton's disciplinary history, and I.C. 5-14-3-4(b)(8) gives a municipality discretion to withhold most personnel records from disclosure. One exception is the statement concerning any past disciplines sustained that resulted in the employee's discharge, demotion or suspension of more than one day. If there are any such disciplines, we will provide you with a copy of findings by the Board of Public Safety or the Chief's letter of discipline (whichever is applicable). Another exception is to advise you of any formal charges against the employee and there are none against David Newton at this time. If there is something more specific you are interested in, please feel free to resubmit a request.

2. The comments above concerning David Newton also apply to Cpl. Nowicki and you will be given those documents that can be disclosed under the restrictions of I.C. 5-14-3-4(b)(8).

3. If there was such a 911 call, and it was transcribed, you will be given a copy of the transcription. If the call was made and can be identified without the aid of an approximate date, we can prepare a recording of it for you. The charge for that would be \$10.00. If you want such a recording, please call Karen DePaepe at 235-9667 to advise her of this. She will then have a copy made.

4. If such a call was made, the remarks concerning the alleged Luann Van Dalsen call would also apply here.

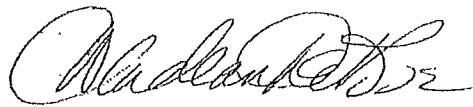
THOMAS L. BODNAR	CHERYL A. GREENE	ANN-CAROL NASH
ANDREA L. BRACHKORSKY	LAWRENCE J. METEIVER	JEFFREY L. SANFORD
		JOHN E. BRODIN

Ms. Bruce
Page 2
July 21, 2011

5. If there is such a photograph in the possession of the South Bend Police Department, you are entitled to it. The cost for reproduction of that photograph will be determined by method of reproduction (as authorized by 2-210(a)(6) of the South Bend Municipal Code).

A representative of the South Bend Police Department will be contacting you when all of the documents have been accumulated. If you request either or both recordings from Karen DePaepe, she will contact you when those are ready.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aladean M. DeRose".

Aladean M. DeRose
Chief Assistant City Attorney

cc: Chief Boykins
Karen DePaepe
Diane Gish

RECEIVED

CITY OF SOUTH BEND - SOUTH BEND POLICE DEPARTMENT

ACCESS TO PUBLIC RECORDS REQUEST

JUL 20 2011

NAME OF REQUESTING PARTY ABC 57 News - Nancy L. BRUCE OF SOUTH BEND
 ADDRESS OF REQUESTING PARTY 53550 Generations Drive, South Bend, IN 46615
 PHONE NUMBER 574-344-5089 DATE OF REQUEST 20 July 2011 TIME 12:00 pm
 SIGNATURE OF REQUESTING PARTY Nancy L. Bruce
 INFORMATION REQUESTED: (Please be specific. Use back of this form if additional space is needed.)

See attached, please.

Requesting party requests ☒ to inspect or ☐ to buy copies (Check One) of the information being requested.

DEPARTMENT HAVING INFORMATION REQUESTED (If known): _____

ALL DECISIONS AS TO DISCLOSABILITY MUST BE MADE AND THE REQUESTING PARTY ADVISED OF SAME WITHIN 24 HOURS AFTER THE REQUEST IS RECEIVED.

INTER OFFICE USE ONLY

Employee Handling Request: _____

Open Case: Yes ☐ No ☐ N/A ☐

DECISION BY CITY ATTORNEY'S OFFICE:

INFORMATION DISCLOSABLE: ☒ See attached letter

INFORMATION NONDISCLOSABLE: ☒ _____

ATTORNEY COMMENTS: _____

SIGNATURE OF CITY ATTORNEY: [Signature]

DATE OF DECISION: July 21, 2011

Informed Requesting Party that information is:

☐ DISCRETIONARY DISCLOSURE

☐ NONDISCLOSABLE

Date: _____

Signature: _____

20 July 2011

Via fax: 574-235-9892

Mr. Thomas L. Bodnar
Assistant City Attorney
City of South Bend
1400 County-City Building
227 W Jefferson Boulevard
South Bend, IN 46601-1830

Dear Mr. Bodnar,

Thank you for your prompt attention to our initial request to Chief Boykins, dated 18 July, 2011. Per your instructions, I am including an Access to Public Records Request, as required by the City of South Bend, accompanied by this letter detailing the nature of our request. This is a request under the Freedom of Information Act.


We request that a copy of the following records be provided to ABC 57 News:

1. Any and all public records pertaining to David Newton, including but not limited to those that address investigation into wrongdoing and/or disciplinary action taken against Mr. Newton.
2. Any and all public records pertaining to Ron Nowicki, including but not limited to those that address investigation into wrongdoing and/or disciplinary action taken against Mr. Nowicki and/or the suspension or termination or resignation of Mr. Nowicki.
3. A copy and/or transcription of the 911 call or complaint from Ms. Luann Van Dalsen, owner of Heavenly Ham, located at 2307 Edison Road in South Bend, regarding objectionable activity involving Mr. Nowicki taking place on the grounds of her business, in which Mr. Nowicki was on duty and engaged in sexual activity.
4. A copy and/or transcription of the 911 call or complaint regarding objectionable activity involving Mr. Nowicki at the location of Wings Etc, located at 2051 East Ireland Road in South Bend, in which Mr. Nowicki was on duty and incapacitated by alcohol.
5. A copy of the photograph that evidences Mr. Nowicki's condition and circumstances at the time that he was discovered at Wings Etc, noted above.

Please supply the requested records in any format available, including but not limited to hard-copy paper, digital recordings and photographs, cell phone pictures and video, dash cam video, 911 audio, and records related to GPS. Disclosure of the requested information to us is likely to contribute significantly to public understanding of the operations or activities of the government and, therefore, is in the public interest.

Thank you for your consideration of this request.

Sincerely,



Nancy L. Bruce
ABC 57 News
53550 Generations Drive
South Bend, IN 46635
574-344-5089